



## Decision

**Matter of:** U.S. Maritime Administration—Gift Funds for Food

**File:** B-330494

**Date:** November 24, 2020

---

### DIGEST

An agency may use unrestricted gift funds held in a trust fund for personal expenses, such as food, if the agency can demonstrate that the expenses are incident to the purposes of the trust. Here, the U.S. Merchant Marine Academy's (Academy) unrestricted gift funds held in a trust fund are available for any activities that further the Academy's mission, including a summit of both federal and nonfederal participants to help the Academy develop a five-year strategic plan. We conclude that the Academy's unrestricted gift funds are available to purchase working lunches for attendees, so long as the lunches will facilitate participation and efficiency.

---

### DECISION

Pursuant to 31 U.S.C. § 3529, the Director of Acquisition at the Maritime Administration (MARAD), United States Department of Transportation (DOT), requested a decision regarding whether unrestricted gift funds may be used to purchase working lunches for federal government employees attending a summit sponsored by the Merchant Marine Academy (Academy), a MARAD component. E-mail from Director of Acquisition, MARAD, to GAO Official, GAO, *Subject: Advance Decision - Strategic Planning* (Mar. 1, 2018) (Request Letter). We conclude that the Academy may use its unrestricted gift funds to purchase working lunches for federal employees attending the Academy-sponsored summit.<sup>1</sup>

In accordance with our regular practice, we contacted DOT for additional factual information and its legal views on this matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006),

---

<sup>1</sup> Following submission of this decision request, the Academy held the summit and used its unrestricted gift funds to purchase working lunches for federal government employees.

available at <https://www.gao.gov/products/GAO-06-1064SP>; Letter from Assistant General Counsel, GAO, to General Counsel, DOT (Dec. 18, 2019). DOT responded with factual information and its legal views. Letter from General Counsel, DOT, to Assistant General Counsel, GAO (Feb. 14, 2020) (Response Letter).

## BACKGROUND

The Merchant Marine Academy (Academy) is an institution of higher education that provides instruction to prepare individuals for service in the merchant marine of the United States, conducts research with respect to maritime-related matters, and provides other appropriate academic support, assistance, and training, as authorized. 46 U.S.C. § 51301(a).

In March of 2018, the Academy planned to host an off-site strategic planning summit to determine the weaknesses, strengths, and future goals of the institution, and to gain stakeholder and expert input as the Academy developed its Five-Year Strategic Plan. MARAD, Office of Chief Counsel, *Use of Funds to Pay for Expenses of Non-Government Personnel at USMMA Conference* (Jan. 26, 2018), at 1 (MARAD Legal Memorandum); Response Letter, Enclosure 1, at 2. At the summit, the Academy planned to seek input from attendees to: “(1) learn from the organization’s strengths, (2) disrupt habitual ways of thinking, (3) explore new directions and opportunities, (4) generate specific strategies for action, and (5) implement the strategy and make it work.” MARAD Legal Memorandum, at 2. Additionally, the Academy planned to use unrestricted gift funds to pay for working lunches for the summit’s participants, including federal government employees. *Id.*, at 3.

After submitting the decision request, the Academy held the summit on March 12-13, 2018, in commercial event space located in Great Neck, New York, with 164 participants in attendance.<sup>2</sup> Response Letter, Enclosure 1, at 1. Academy officials used \$13,640 in unrestricted gift funds to provide lunch to all attendees on both days of the summit because they determined the schedule did not provide sufficient time to leave the venue and were concerned that uncompensated participants might not return for the afternoon sessions if an off-site lunch break was scheduled. *Id.*, at 2-3.

---

<sup>2</sup> The conference was not held on the Academy’s campus because officials determined that the large number of attendees would disrupt the schedules of cadets. Response Letter, Encl. 1, at 1. The 164 conference attendees consisted of 97 government employees and 67 nongovernment participants. *Id.*, at 1–2.

## DISCUSSION

At issue here is whether the Academy may use unrestricted gift funds to purchase food for federal government employees<sup>3</sup> who attend a strategic planning summit hosted by the Academy.

Gifts or donations are gratuitous conveyances or transfers of ownership in property without any consideration.<sup>4</sup> B-274855, Jan. 23, 1997. Where Congress makes donated or gifted funds available to an agency pursuant to specific statutory authority, such funds are considered appropriated. *Id.* In general, agencies may not use appropriated funds to furnish meals or refreshments to employees within their official duty stations. B-247563, Dec. 11, 1996. This is because such expenses are considered personal in nature and government employees are expected to bear them from their own salaries. 72 Comp. Gen. 178 (1993).

However, we have explained that where federal officers are authorized to use private donations that are held in a trust fund to carry out certain activities, we have been willing to rely on the discretion of agency officials to determine whether such expenditures are in furtherance of official purposes and funds may be used for a government employee's personal expenses. B-195492 L/M, Mar. 18, 1980. This does not mean that federal officers may always use moneys held in trust for personal expenses. *Id.* Rather, agency officials must justify how the proposed expenditures are incident to the authorized purposes of the trust fund. *Id.*

Here, the Maritime Administrator is authorized to accept and use conditional or unconditional gifts of money or property for the benefit of the Academy. 46 U.S.C. § 51315(a). Unconditional gifts of money must be deposited into the Academy Gift Fund—a trust fund, and such amounts, unless specified by the terms of the gift, may be used by the Administrator “for appropriated or non-appropriated purposes at the Academy.” 46 U.S.C. § 51315(b); MARAD Legal Memorandum, at 3.

The Academy asserts that unrestricted gift funds held in the Academy Gift Fund may be used to purchase working lunches for federal government employees participating in the summit based on “GAO opinions holding that agencies may use gift funds to purchase food for an agency-sponsored event when doing so carries out an authorized agency function.” Response Letter, at 2, *citing* 46 Comp. Gen.

---

<sup>3</sup> MARAD limited its request for a decision to the availability of gift funds to purchase working lunches for federal government employees who attended the conference. Request Letter, at 1.

<sup>4</sup> The essential elements of a gift are donative intent, delivery, and acceptance. B-274855, Jan. 23, 1997. All that is required to make a gift to a federal entity is a letter to the appropriate agency head transmitting the funds for the stated purpose. *Id.*

379 (1966). Additionally, the Academy reasons the unrestricted gift funds are available to purchase working lunches because providing lunch will allow the summit to be conducted in an efficient manner and ensure all attendees' continued participation in the summit.<sup>5</sup> Response Letter, at 2. We agree with the Academy's rationale.

The Maritime Administrator is authorized to use money deposited in the Academy Gift Fund "for appropriated or non-appropriated purposes at the Academy," unless otherwise specified by the terms of the gift. 46 U.S.C. § 51315(b). As such, any gift funds deposited in the Fund, that are donated without terms and conditions, are available to carry out any activities that further the statutory mission of the Academy regardless of whether the Academy's regular appropriated funds are available for such activities.

Here, the Academy notes that the gift funds that will be used by the Academy for summit expenses, including the provision of lunch, were donated without any terms or conditions. Response Letter, Enclosure 1, at 2. As a result, the gift funds that the Academy plans to use to provide lunch are broadly available for any activities that further the Academy's mission.

The statutory mission of the Academy is to prepare individuals for service in the merchant marine of the United States, to conduct research with respect to maritime-related matters, and to provide other appropriate academic support, assistance, and training. 46 U.S.C. § 51301(a). The Academy states that the goal of the summit is to solicit stakeholder and expert input in order to allow the Academy to develop its Five-Year Strategic Plan. Response Letter, Enclosure 1, at 2. The development of the Strategic Plan will require the Academy to review its weaknesses, strengths, and future goals, which the Academy believes will enable leadership to provide appropriate academic support to the institution. Response Letter, at 2. The Academy also explains that "[p]roviding lunches to the attendees [is] necessary to conduct the conference in an efficient manner and ensure continued participation of all attendees." Response Letter, Enclosure, at 3. The

---

<sup>5</sup> Conversely, the Department of Transportation believes the Academy may not use gift funds to purchase working lunches for the summit because 31 U.S.C. § 1345 prohibits the use of appropriated funds to pay for subsistence expenses at meetings. Response Letter, at 3. We disagree with DOT's overall conclusion that 31 U.S.C. § 1345 applies to the facts here. We have consistently found that the scope of 31 U.S.C. § 1345 is limited, and that it addresses only those conventions or other forms of assemblages or gatherings that private organizations seek to hold at government expense. B-300826, Mar. 3, 2005; See 72 Comp. Gen. 229, 231 (1993) (effectively overruling prior GAO decisions that applied 31 U.S.C. § 1345 to meetings and conferences other than assemblages and gatherings that private organizations sought to hold at government expense). The record here does not suggest that any private organization seeks to hold the summit at government expense.

provision of lunch to summit attendees will ensure continued participation in a summit that will allow the Academy to develop its Strategic Plan, thereby allowing Academy leadership to provide appropriate academic support to the institution. Therefore, we agree with the Academy that its gift funds are available to purchase working lunches for federal government employees attending the summit.

#### CONCLUSION

The Academy may use its unrestricted gift funds to purchase working lunches for federal government employees attending a summit sponsored by the Academy because such funds are available for any activities that further the Academy's mission and the provision of food for these employees will allow the Academy to develop its Five-Year Strategic Plan. The determination of whether an agency may use unrestricted gift funds for personal expenses, such as food, because those expenses are in furtherance of official purposes must be made on a case by case basis.

A handwritten signature in black ink, reading "Thomas H. Armstrong". The signature is written in a cursive style with a horizontal line above the name.

Thomas H. Armstrong  
General Counsel